

Albemarle County Planning Commission
August 23 2016

The Albemarle County Planning Commission held a regular meeting on Tuesday, August 23, 2016, at 6:00 p.m., at the County Office Building, Lane Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Mac Lafferty, Pam Riley, Jennie More, Daphne Spain, Tim Keller, Chair; Karen Firehock, Vice Chair and Bill Palmer, UVA representative. Members absent were Bruce Dotson. Ms. Firehock arrived at 6:08 p.m.

Other officials present were Rebecca Ragsdale, Senior Planner; Scott Clark, Senior Planner; John Anderson, Engineer; J.T. Newberry, Senior Planner, Elaine Echols, Acting Chief of Planning; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and John Blair, Senior Assistant County Attorney.

Call to Order and Establish Quorum:

Mr. Keller, Chair, called the meeting to order at 6:02 p.m. and established a quorum.

Public Hearing

The Planning Commission recessed at 8:32 p.m. and the meeting reconvened at 8:39 p.m.

d. ZMA-2016-00007 Hollymead Town Center, A-2 (Signs 24 & 31)

MAGISTERIAL DISTRICT: Rio

TAX MAP/PARCEL: 03200000004500, 032000000005000

LOCATION: Hollymead Town Center Area A-2, the southwest quadrant of Seminole Trail (US 29) and Towncenter Drive to the west of Area A-1 in the Hollymead Development Area.

PROPOSAL: Request to amend proffers for ZMA 201000006 related to provision of for-sale affordable units, revise how the percentage of affordable units are calculated from total number of units within the development to total market rate units, to reduce the cash proffer amount from \$12,400/townhouse or condominium and \$11,900/apartment to \$3,845 for these units, to eliminate a cash proffer for County recreational facilities, to add recreational facilities to the site, and to revise the phasing plan for residential and commercial use.

PETITION: Amendment to rezoning for 44.5 acres on property zoned Neighborhood Model District zoning district which allows residential (3 – 34 units/acre) mixed with commercial, service and industrial uses. Existing density is 27 units/acre. No change to density is proposed.

OVERLAY DISTRICT: EC-Entrance Corridor; AIA-Airport Impact Area; Managed and Preserved Steep Slopes

PROFFERS: Yes

COMPREHENSIVE PLAN: Urban Mixed Use (in Centers) –retail, residential (6.01-60 units/acre in Destination Centers), commercial, employment, office, institutional, and open space; Commercial Mixed Use -retail, residential, commercial, employment, office, Institutional, and open space; Urban Density Residential (residential (6.01 – 34 units/ acre) - supporting uses such as religious institutions, schools, commercial, office and service uses; and Light Industrial - manufacturing from prepared materials, processing, fabrication, assembly, and distribution of products. (Rebecca Ragsdale)

Ms. Echols recognized Rebecca Ragsdale who works in the Zoning Division. So it is an unusual thing for her to be here tonight; but, she used to be in the Planning Division and we are very glad that she is able to assist us with this staff report. So she just wanted to say thank you Rebecca.

Mr. Keller said thank you and welcome.

Ms. Ragsdale summarized the staff report in a PowerPoint presentation. This is a rezoning before you that deals specifically with the number of proffer amendments that have been proposed to Hollymead Town Center A-2.

The Planning Commission has had some other recent proffer amendment requests before you and Hollymead has been rezoned in different components over the years. We are referring to one specific area of Hollymead in the location shown on the map that is the undeveloped portion along Meeting Street.

This request is dealing specifically with Area A-2 as outlined on the map. The rezoning was approved originally in 2007 and it is Neighborhood Model District (NMD). The approval allows up to 1,222 residential units, 104,000 sq. ft of retail, 179,000 sq. ft. of office, and an 80,000 sq. ft. hotel. There have been some amendments over the years one of which was to allow a movie theater. But, to date there has not been any development on this site. We have a couple of site plans under review. Those site plans are all residential that are proposed and they are noted in the staff report. Nothing is proposed as far as Code of Development or Application Plan changes at this point. It is specifically the series of proffer amendments as noted in the staff report that she would go over again quickly.

The first is a few changes to the Affordable Housing Proffer 1. That is what the Commission saw most recently as far as the Hollymead A-2 Proffer change. The proposal was to reduce the minimum number of units or the percentage of affordable units from 20% to 15%, which was approved by the Board. That was based on the total number of units within the development. You will note that we have noted that the current version of the proffers before you are suggesting that that percentage be based on the market rate units. Staff is recommending, as there was a lot of discussion the last go round, that be changed back to the total number units, which would make it consistent with the Affordable Housing Policy and other affordable housing proffers.

There was a proposed change to the banking and carry over requirements in the affordable housing proffer. Then there is a proposal to eliminate the minimum percentage of units that would be for sale. That is actually a change that we have seen in other developments such as Old Trail that went through the process towards the beginning of the year.

The other change that is requested before you is to amend the CIP Cash Proffer Proffer 4. The request is to reduce it from \$12,400 for attached/townhouse/condominium and \$11,900 for multifamily/apartment to \$3,845 for each attached/townhouse or condo/multifamily/apartment dwelling unit. Ms. Ragsdale pointed out that the applicant might want to speak to the Commission more about that this evening or how the suggestion as far as how they might want to look at revising their proposed amendment.

There is also as the proffers before you are presented there is a proposal to remove the cash proffer 8 for \$500/unit for off-site recreation facilities. That proffer was in addition to the green space and amenities within the development to off-set regional type recreational facilities. Although there was not a specific recreational project identified at the time of the rezoning the thought was it could go to Chris Green Lake. There is currently not anything identified specifically either and we will talk a little bit more about that one in a second.

Then the last proffer 11 is to amend the phasing plan for commercial and residential. There was a minimum number of residential units that are required before any commercial could be built. Originally it was approved with 100 dwelling units before any commercial. So the proposal is that before 75,000 sq. ft. of commercial is constructed that there be residential units be built.

Then there is a proffer to commit to additional on-site amenities within certain blocks of the development within A-2. As previously stated this is all physically to area A-2. That would include a minimum of a 3,500 square foot pool including the deck and then a 1,777 square foot clubhouse.

Just to give a little bit more background on the recreation and the amenities staff provided a table in the staff report. When the rezoning was originally analyzed staff looked at what the ordinance requirements are in Section 4 of the ordinance and then the Neighborhood Model also speaks to greenspace and amenities so there was a modification of the Section 4 requirements and the amenities that were approved through that rezoning are in the middle column. So it was determined given the greenway dedication and the characteristics of this type of development that all of the ordinance specified amenities could not be provided on site so they proposed alternative amenities such as civic plazas, pocket parks, the linear park, 2 tot lots, a clubhouse including a basketball court, and a neighborhood center and pool. Then as mentioned the \$500 per unit recreational proffer. So with this rezoning the proposal was to add the additional on-site amenities as stated and originally to eliminate the \$500 per unit cash proffer completely. As outlined in the report staff feels like the off-site amenities still need to be addressed. So staff had suggested that similar to the cash proffer for the CIP proffer if you noticed there were a number of credits that were given so payments for the CIP cash proffers would not start until 151st unit. We sort of looked at it in a way as to quantify the cash value of the on-site amenities and that is how we had suggested one approach to keeping the \$500 per unit proffer to mitigate the off-site amenities. She thinks the applicants can speak to whether they would be agreeable to making that change or not; but, staff has not recommended eliminating Proffer 8 unless there is an alternative proposal along those lines.

The next slide is a Greenspace & Amenities Plan that was included in the packet. It was hard to find a crisp legible Greenspace & Amenities Plan. But, this just gives you a sense of how the greenway, the linear parks and the plazas are interspersed within the development. So the new proposed clubhouse and pool would be within other blocks, Blocks C and D, and the one already proposed in the Code of Development and application plan is over in Block B closer to the Kohl's end of the development.

So just outlining again how staff came to its recommendation we feel like based on our experience in recent developments in what we are seeing with affordable housing that having some additional flexibility helps ensure that we get the affordable housing, we get people in it and it is a type that is responding to the needs in the market. So staff has supported the affordable housing proffer changes, except as she said for how the calculation is done that it should be based on the total number of units. The changes to the phasing plan staff does not have any concerns about since we will still have some assurances that there will be a mix of

residential and non-residential activities. Then they have proposed a significant amenities package with Area A-2.

The factors unfavorable just citing some of the reasons why staff have not supported the CIP cash proffer reduction. There has been a lot of discussion with Out of Bounds and Spring Hill Village recently as far as where the county is with reducing the cash proffer amounts and the rezoning was reviewed under prior legislation than we have now and we are deemed to be reasonable and mitigate the impacts of this particular development. We are not required to change the proffers. There has not been a Board direction to start analyzing them in that way and then the two recent proffer amendments that went to the Board were not approved to reduce the cash proffer amounts.

Staff recommends approval of the following proffer amendments:

- Proffer 1-Affordable housing -- eliminate the minimum percentage of units required to be for-sale and revise the banking/carry-over requirements.
- Proffer 11-Phasing plan – eliminate the requirement for a set ratio of commercial to residential square footage to be constructed over the life of the project.
- Proffer 13 Recreation amenities- New proffer to provide additional recreation amenities in Block D-2, C-2, or C-4 to include a minimum of 3,500 square foot pool and deck along with a 1,777 square foot clubhouse/exercise facility.

Staff does not recommend approval of these proffer amendments

- Proffer 1-Affordable housing - Revise how the percentage of affordable units are calculated from total number of units within the development to total market rate units
- Proffer 4 - Reduce CIP cash proffer amounts.
- Proffer 8- Amendment to remove a cash proffer in its entirety for off-site recreation facilities. Recommend keeping proffer and revising to begin proffer payments with the 913 unit within the development.

Our recommendation since there are so many proffer changes is for the motion to recommend approval of Proffer 1 with the exception noted; the changes to the phasing plan proffer, and then supporting the additional amenity proffer. But, staff does not recommend the change to how affordable units are calculated, to reduce the cash proffer amounts or to completely remove Proffer 8 unless it is revised. One of the approaches would be to revise it that proffer payments begin with the 913th unit within the development. So that was the motion that was suggested. Staff has referenced the staff changes in the motion going back to the slide because it was so detailed as far as the list of them. So she would be happy to answer any questions.

Mr. Keller asked staff to put the motions back up since it is complicated.

Ms. Ragsdale pointed out the motion references the changes recommended by staff, which was really this slide.

Mr. Keller noted that he just wanted to see it for a moment longer while we are having our discussion. He invited questions for staff.

Ms. Riley said she had a question on Proffer #1. She understands your recommendation on eliminating the minimum percentage being required to be for sale. But, she is not clear what revise the banking/carry over requirements means, and asked if she could please describe that.

Ms. Ragsdale replied that it allows for a plat or plan to potentially go below 15% if they have banked units; but, at no point would the total number of units within the development be less

than 15%. So it allows them to do a little bit less in one block if they have some banked in another.

Ms. More said when there are some banked in another portion is there a guarantee if that is a different phase of the development. She does not understand how the county can guarantee that those end up being built when it always keeps changing.

Ms. Ragsdale replied that we have experience with this type of proffer and tracking it in Old Trail so it has to be tracked with every site plan and subdivision plat. Now approving a subdivision plat or a site plan does not guarantee that they get built; but, we have a tracking table for the total build out of the development. They are interspersed with each subdivision site plan or site plan that comes in per block. So you get them sort of distributed throughout the development and we are tracking them on the tables at the time of review of those permits or applications.

Ms. Echols pointed out this is something that we have been doing before and it is not new so we do guarantee that there will be 15% of affordable units. Sometimes what we have done is say that you could provide 20% in one section and down to 10% in another because overall what you get is the 15%. But, Ms. Ragsdale is actually the proffers zoning person who deals with making sure that the proffers are administered properly, and so she can do this with some assurance in how we have done this in other developments.

There being no further questions for staff, Mr. Keller opened the public hearing and invited the applicant to speak.

Nena Harrell, with United Land Corporation, said we are here before you again to discuss the proffers for Hollymead Town Center Area A2. We have heard a lot about it in the last couple of months. We have an apartment developer that has a pending site plan for 243 apartments at Hollymead Town Center. As most of you remember the proffers were entered into by a prior owner in 2007 when the economy was extremely strong and everybody thought that it could only go up. There was a collapse; we just haven't pulled out of it yet. Additionally, the zoning that was obtained at that time is impossible to build on that site.

Ms. Harrell said our site consists of 44.5 acres and was zoned for 1,222 units as Rebecca mentioned and 368,000 square feet total non-residential. The buildings would have to be many stories with parking garages, and not just 3 stories. Residential and commercial rents for our area will not support the cost of construction of multi-story buildings with parking garages. The proffers and the expectations for development are totally unrealistic. We fully intend to apply to amend the code of development as we have discussed with the county staff. But, that is a very lengthy and time consuming process and so in the interim we have a local apartment developer who wants to build 243 apartments. So we are trying to find a way to make that happen. That apartment developer would build an apartment complex that would be beneficial to the county and its residents in many ways for the affordable housing, for jobs and for tax revenue to the county. However, the proffers, the cash proffers and the other proffers are just too restrictive to make the development work.

Ms. Harrell said the chart she gave as a handout compares the major features of the development that has recently been before you. Brookhill is 277 acres with 1,550 residential units and 50,000 square feet of non-residential. Once again, we are 44 acres that is one-sixths the size and we have 80% of the number of the units of Brookhill and 7 times more non-residential than Brookhill. It sounds really great. We are usually here asking for density; but, the numbers are impossible for Albemarle County. The cash proffers of 2007 were based on 1,222

units and 368,000 square feet of commercial. The number is not realistic based on the reality of the development.

Ms. Harrell pointed out the chart is a summary of what she just said about the number of units, the acreage and the comparison and then actually what a projected annual development could look like. Based on our zoning you can typically build approximately 8,500 square feet of commercial space per acre. At that rate you could not even build the commercial portion alone without any residential on our site. Additionally, you could also not build all of the residential with no non-residential. So it is just way over the reality. These numbers are based on gross acreage before deducting the greenway, which was already dedicated, the linear park and green space, which is a total of about 10 acres. So we really only have about 30 acres net to develop. At most we could get 500 to 575 residential units without any supporting commercial. The zoning is just not achievable so the original cash proffer amount just no longer is applicable.

Ms. Harrell pointed out the Hollymead Town Center, as was Biscuit Run, has grossly impossible cash proffers, and we know what happened with Biscuit Run. Our zoning and proffers were for a metropolitan area, which we certainly are not. We are in agreement with staff's recommendations to amend proffer 1. We still question how the number of units is calculated; but, we will accept that is the county's policy so that is fine. We would love to participate in studies later on; but, we accept that. We are also accepting what staff said about proffer 11, the phasing plan, and the new proffer 13 for the recreation amenities. It is the cash proffer policy that we strongly ask you to consider. Not only has the proffer law changed since 2007 the financial conditions have change dramatically since these proffers were agreed to by a previous owner.

Ms. Harrell noted that more than 2 years ago a resolution of intent to amend the cash proffer policy was adopted by the Board of Supervisors in April, 2014. The Board of Supervisors instructed the FIAC to study the cash proffer policy and determine what would be really fair, equitable and consistent within the state law. Some of your own members participated very well in this and accepted the duty. They held well over 2 dozen meetings and worked diligently for years to come up with numbers that could be fair and equitable for developers and the county. But, those numbers have not been utilized. The committee was charged with "using the same methodology that the county used in 2007, but incorporated updated financial economic and demographic information." For this apartment developer on only 7 acres the cash proffer would be almost 1 million dollars, which makes the project financially unfeasible. Shouldn't we be able to update our proffers based on financial and economic data as well as what the FIAC Committee was charged with. It is debatable whether the cash proffer was reasonable at the time; but, we know it is not reasonable or within the current law of today. Also, the prior owner signed the proffers and stated that the conditions were voluntarily proffered; but, we all know we have to sign that in order to get our zoning. It is always added to what we are doing. We have installed all of the infrastructure for the development and Mr. Wood will speak further to you about how much we have spent to build the infrastructure. She would also like to add that Rebecca brought up when we originally submitted the new proffers we put the number in at 3,865 because we were evaluating the difference in the CIP and the CNA or just the CIP alone, which Mr. Keller can speak a lot better to than she can. But, that is why we chose the 3,845 number. However, after reassessing and also at the time we thought we were going to get more townhouses, so we used the number for townhouses with the CIP and CNA instead of just the CIP. However, now we are willing to go with the 5,262 number for the multi-family and the 3,845 for the towns because we do have more multi-family units than we do towns.

Ms. Harrell said additionally, we are taxed like when you can use the property as it is currently zoned; however, the huge cash proffers prevent us from using the property. If we cannot find a way to reduce the cash proffer we will be forced to appeal our tax assessment for a lower evaluation. An apartment developer can usually pay approximately \$20,000 per unit for the land cost, and with a \$15,000 proffer, it is obvious the numbers just will not work. Also, they pay less for an affordable unit. Often what they will pay for an affordable unit is equal to the amount of the proffer so you get nothing for the land at that rate and the land is free.

Ms. Harrell said the legality of the past proffer policy may continue to be a debate. However, we know that it is not consistent with the current state law and request that you support our request so that the developer may move forward. I would like to remind you that this development really does produce 15% affordable housing/affordable rental housing; however, it cannot be built with the existing cash proffer. The property has been sitting idle since 2007 due to the economy and the proffers that were agreed to by the prior owner. Also, new water quality regulations have increased the cost of development due to the expense to meet the regulations and by requiring more land to meet the regulations. Therefore, it reduces density. We have an opportunity to bring affordable units and tax revenue to the County if you will support the lower cash proffer. The county is looking for revenue services and this would be a long term tax payer by a local business and developer that would provide much needed rental and affordable housing. We respectfully ask for your support and she would be happy to try to answer any questions. (Attachment – Letter and chart submitted by Nena Harrell)

Mr. Keller invited further questions for the applicant.

Mr. Lafferty asked if the swimming pool that is proffered and the clubhouse will that be dues.

Ms. Harrell replied no, sir, it will not be dues and will be for the apartment development. The apartment developer is here and he can speak more to why that cannot be dues. We had that discussion with Rebecca.

Ms. More asked what percentage of the proposed apartment development is affordable, and Ms. Harrell replied 15% of the 243.

Ms. Riley asked do you agree with the staff recommendation for the difference between the 1,242 and the 913 units for the \$500 cash proffer for recreation off site.

Ms. Harrell replied yes, ma'am, we are in agreement with that. We would be happy to pay the \$500 if we are able to get 900 units there.

Mr. Keller thanked Ms. Harrell and invited other public comment.

Todd Dofflemeyer, CEO of the Cathcart Group, said they have developed the Lakeside Apartments, Carriage Hill and most recently the Reserve at Belvedere. We have a total of 780 units in Albemarle County and pay exactly a million and 27 dollars a year in real estate taxes, which works out to be about \$1,300 a unit. We love Albemarle County. We have been very successful here and have been providing homes for people for years. My partner, Rip, and I actually stopped building in Albemarle because of the proffers. So we looked in West Virginia where we built units there. We have built in Harrisonburg, and of the 1,500 units that we have built we have never been able to make one work with proffers. We actually paid less for the land in Harrisonburg than what the proffers are in Albemarle County; and, we have had a very

successful project there. At the end of the day everybody has got to make money and we have got to figure out a way to do that. He understands the land seller has to put in infrastructure and make money on that side of the deal as well. We have been looking at this deal for close to 12 months with Wendell and Nina. Quite honestly he had a meeting with them 2 weeks ago and said we were not going to be able to make it work since we are about a million dollars apart. One of the biggest challenges is all of the proffers on the property.

Mr. Dofflemeyer pointed out at first we were looking at 20% affordable units, and we would love to do affordable. We offer affordable discounts to service men, to teachers and the community without being proffered. We do that as a good citizen. But, the 15% affordable that they were able to reduce it to actually has an impact of \$122,000 a year on the cash flow of the community. It is a big number when you are talking about making a debt service. He is not asking for them to feel sorry for us; but, we are trying to provide affordable housing. So we have looked at different ways in making that work. If you look at the apartments we have in Albemarle County, we like to look at them at least from our perspective as a tax revenue positive generator. You don't have services as far as police and fire since we are a minimal use on those. He pointed out this morning there were 2 children at the reserve at Belvedere getting ready to get on the bus. So there is a lot of density on tight sites and it is not a big driver on schools. We have done school impact studies in other communities and it just has a very minimal impact for the amount of units.

Mr. Dofflemeyer said he was a lifelong resident of Albemarle County and was attracted to this site. Having worked in Richmond for 10 years he was concerned about the density described here. He did not know if anyone had been down recently to Short Pump and seen the atrocity of the work down there. But, he would hate to see the type of density that the former developer was looking at for this community even attempted out there. Regarding the traffic situation, he lives in Earlysville and comes up 29 every day; and, he won't say that the new bypass solutions have worked or not; but, it has made it better. One of our goals was to try to find a land out on the north end of town for our luxury apartment housing, and this looked like the great site. We have gotten into it and we thought we could make it work. We actually talked to Wendell about having to do the structured parking underneath. It cost \$60,000 more per unit to build a unit on structured parking four stories on structure than it does our typical garden style walkup.

Mr. Dofflemeyer said we have looked at this thing 6 ways from Sunday and it just is not going to work. So when we look and talk about bringing 34 affordable units; it is not going to happen; we are not going to build them; and we are going to walk away from the deal. It is not your problem. But, it would regenerate. We did some revenue generation and think this deal is going to generate about \$302,000 in taxes. So we are going to lose 34 affordable units, \$302,000 in taxes, and then he thinks the biggest thing that needs to happen in Hollymead Town Center in that end of town is rooftops to drive retail and to make that a successful side of the county to keep people from driving down 29 putting more strain on our road system. In terms of other jobs apartments for the long run 300 to 400 apartments we will support a 10 person staff long term; but, we would have 300 to 400 jobs for a period of about 22 months on the construction side. So there are a lot of positives. Obviously, he would love to see the deal happen. As it is structured now and the proffers that are in place it just won't and we will continue to go look elsewhere to build. That is all, thank you.

Mr. Keller asked if there are any questions.

Mr. Wendell Wood said he was a lifelong resident of Albemarle County. Actually, he is the fifth generation here and as of three weeks ago he added two more great grandsons. So we are in

the community and have been. We love this community. He started his business here in 1960 and he feels like we have committed considerable tax dollars over the years. It is well into high means. The taxes on this property alone since it got approved he would like to remind you this project was submitted by a large metropolitan Washington/New York developer who he thinks thought downtown Manhattan was coming. The comparison sheet before you breaks that down pretty good. This land is 44 acres and we can only build 550 units. It is actually only 33 acres when you take out the green space and all. That is with no commercial. So let's say it goes the other way, we can only build 250,000 square feet if it is all commercial with no residential. So it is an impossible zoning and the property is being taxed in that fashion. We have paid the taxes in the last 9 years. He pointed out we were not the applicant for this project; but, we had to take it back over because the applicant could not do it and defaulted. We took it back over and are having to live with these. For 9 years we have not been able to get anything developed on this property. During that period of time we have paid a little over 2 million dollars in taxes while the land sits there. We would be glad to meet with anybody; but, these are the facts by your own standards in how you have to develop. It can't happen and it can't be built on to this density. That is the price. We have spent over 7 million dollars on Route 29. A lot of people think the state widened 29. The state did not widen 29 from Hollymead up to the traffic light at Forest Lakes; I paid for that. Hollymead Town Center Drive from Town Center back to the airport people think the State of Virginia; I paid for that. We ran water and sewer to this whole project. We put sewer from Forest Lakes to the airport. The sewer was bubbling up on the ground at the airport; and, we ran the sewer to the airport. They contributed a small amount to that. For the money that has been spent in that site like it was going to be developed as Ms. Harrell said you have to build 6, 8 and 10 story buildings there with parking decks of 4 and 5 stories to make the density requirements. It is not happening. It has not happened in 9 years, and not one piece has happened yet we had built the infrastructure. We would like for you to consider this. We have now a local developer who is building 15% affordable housing and getting housing built in there. We would hope you could support that and appreciate it. If you have any questions, he would be glad to try to answer them.

Mr. Keller invited questions for Mr. Wood. There being none, he invited public comment.

Ms. Firehock pointed out that Morgan Butler had signed up to speak.

Morgan Butler, with the Southern Environmental Law Center, thanked you for the chance to speak tonight. He pointed out the Southern Environmental Law Center was actively involved back in 2007 when this piece of the larger Hollymead Town Center was approved. We worked to make it more consistent with the comprehensive plan amendment that governed the town center. The proffers, the phasing proffer in particular, were a big part of that and key to this ultimate approval. Notably, the Hollymead chapter of the County's Land Use Plan called for a mixed use town center with a significant residential component. However, as the different areas of the Town Center property came in for rezoning that residential component was largely missing. As those pieces then began to build out what emerged resembled a massive shopping center with a small residential piece of its outskirts rather than the truly mixed use town center called for in the comprehensive plan.

Mr. Butler said the 18th proposal, the one before you tonight, was the last piece of the Town Center rezonings to be approved. It was here where the substantial residential component finally showed up at least on paper. We felt the 1,200 dwelling units proposed and approved for A2 that this one piece accounted for roughly 75% of the residential units proposed for the entire Town Center; but, it also included a large chunk of commercial space, roughly 400,000 square feet. The county was understandably concerned that the developer might build that commercial

space first and then give short shift to the residential component that was so essential to achieving the balanced mix of uses here. That is where the phasing proffer comes from. It deliberately phases the development of non-residential space in A2 to the construction of residential units. He won't go over the specifics of the different tiers and what they require; but, he will note that nothing he has heard tonight from the applicant has explained how that existing phasing requirement would preclude the apartment proposal that has been discussed tonight and is apparently the driving force behind the proffer changes they are seeking. Because that phasing requirement is so important to getting the true mix of uses here we would urge you to reject the new phasing scheme that has been proposed by the applicant. Thank you for the chance to comment.

Ms. Firehock invited anyone else to speak who did not sign up.

There being no one, Mr. Keller closed the public hearing to bring the matter before the Commission for discussion and action.

Ms. Echols asked if the applicant would be given time for a rebuttal.

Mr. Keller said he was sorry because he felt that the three speakers for the applicant went way over the ten minutes; but, he still should invite them up and ask them to have a very concise piece.

Ms. Firehock suggested that the applicant respond to Mr. Butler's comments.

Mr. Keller invited Ms. Harrell to respond to Mr. Butler's comments.

Nena Harrell, with United Land Corporation, said she was a little taken back because what we are were trying to do is bring residential into the development. That is the whole crux of what we are trying to do. We have a site plan pending. So we are trying to bring the residential component in so she is not sure she understands Mr. Butler's comment because that is what we are trying to do. We are not trying to put more non-residential in right now. We have plenty available in A1 so we have plenty of commercial that we can build so we are not trying to add any commercial in A2; we are trying to bring in rooftops.

Mr. Keller invited questions.

Ms. Firehock said Mr. Butler just said he wondered how the phasing requirement affected the apartment proposal.

Ms. Harrell said that it just allows the apartment proposal to go ahead. She does not actually have those numbers with me; but, she knows Rebecca and Elaine have them. But, they were huge numbers of apartments that needed to be put in before any commercial; and, then vice versa a bigger number of commercial that needed to be put in. So at this point if we can do the apartment complex she thinks we would be ahead of the game as to what the entire intent was.

Ms. Riley said she was a little bit confused by this then. She asked Ms. Harrell if she was saying the apartment complex cannot take place without the proffer 11 phasing plan.

Ms. Harrell asked Ms. Ragsdale to read the old proffer language since she did not have it.

Ms. Ragsdale pointed out she went through things quickly when they touched on this. She said it was 100 dwelling units before any commercial and then 600 dwelling units before 200,000 square feet of non-residential. So the proposal is 30 units before 75,000 square feet, and then 100 units before 200,000 square feet. So we have this proffer; but, we also have some pretty detailed tables in the Code of Development. It is sort of another safe guard, if you will, that have minimum residential units required by block. We did not have that in the slide show. But, there is this proffer; but, there are also some regulations in the Code of Development that we feel like still get the mixed use and assure that there would be residential and not just commercial.

Mr. Keller said to follow up on both of these points then you have lowered the numbers of residential that would be required in this process. So we have heard from a part of the team saying that it is very difficult to make the apartments work. So if the apartments were to fall through then it means that we could move sooner to a higher amount of commercial.

Ms. Echols said that is correct with the proffer amendment if that were approved.

Mr. Keller asked if that is being supported by staff at this point.

Ms. Echols replied that is correct. She explained the reason why staff was supporting this residential change for the change in the mix is because we believed we were getting residential units. We were not looking at it from the perspective of if they don't do those residential units. But, you are absolutely right. We have been working hard with them on a particular site plan in trying to make they can do the residential units. It may have been a safeguard for them; but, they can do the residential units without changing the phasing proffer that they have right now. They could do these residential units.

Ms. More said so the phasing proffer is not preventing them from moving forward with residential units.

Ms. Echols replied that is correct.

Mr. Keller said he would guess this is so unusual anyway that he invited Mr. Wood to come forward and speak, but to try to keep it brief. He noted that if Mr. Butler feels that he needs to say something that they would give him a chance, too.

Mr. Wendell Wood said he would apologize because he was now confused because we are in here to build these apartments. That is what our request to you is. It sounds like Mr. Butler was saying we were not going to build them. That is what we are here before you tonight for is to build 244 apartments before any more commercial. He has to admit that he is confused about it. But, that is what this application is, and that is what we have been working with staff on. The application that is before you is strictly for the apartment to go forward and not more commercial.

Mr. Keller said we will give Mr. Butler a chance to clarify his point, and if you would like to have another rebuttal we will do it, and then we will call it at that point. But, he wants everyone to feel that they have had an opportunity to express their views on this.

Mr. Morgan Butler said he was following up on earlier comments. He said he shares the confusion because as he said before and the staff just confirmed he was confused why this particular proffer is even on the table for a change. It is not precluding them from going forward with this current proposal. So why is it even on the table and why does it need to be changed.

The down side of changing it in the way they have discussed is the potential that you just discussed if the apartment complex falls through then it will allow them to build more commercial sooner without a residential component. But, you can even put that aside and he did not see why they even need to change the proffer in the first place because it is not precluding what they are trying to go forward with tonight, which is this residential piece. He hopes that is clear. Thank you.

Mr. Keller invited Mr. Wood or his colleagues if they would like to have a couple of minutes for rebuttal.

Ms. Nena Harrell asked Rebecca to read the original proffer one more time. They only requested to change a portion of that original proffer and not the entire proffer so she has to try to figure out why they were trying to change it.

Ms. Ragsdale pointed out that she left her memory stick and could not put it up on the screen. But, the phasing plan prior to the issuance by the county of building permits that would authorize the construction of any square feet of gross floor area of commercial and office gross floor area within the property building permits shall have been issued for at least 100 dwelling units prior to the issuance by the county of a building permit that would authorize construction of up to 200 square feet of gross floor area of commercial and office within the property, building permits shall have been issued for at least 600 dwelling units. That is in your packet, too.

Ms. Harrell said she would guess the 600 dwelling units is what we don't think we could ever do anyway. So we did not try to change the entire proffer. She thinks the 30 units actually came up five years ago when we were doing the movie theater and working with Mark Graham at that time. It is the second part of the proffer she believes that they are trying to change because it is about the 600 units which we don't think we will ever have.

Mr. Keller said he thinks now we are seeing what the point is.

Ms. Harrell asked is not that correct Rebecca we are only trying to change the second part of the proffer. We are not changing the first part.

Ms. Ragsdale pointed out the proposed language has both. The old proffers were attachment B and the new proffers are in there as well. So the change is to the first and the second part of the proffer that prior to building permits they would authorize up to 75,000 square feet of commercial office building permits shall have been issued for at least 30 residential units. So it is lowering like you said the number of residential that is required and then they can do a little more commercial which we don't have any concerns about because we are still getting mixed use within Hollymead Town Center. As she said other sections have built residential as we noted in the staff report and then this also has the code of development that has minimal residential units required in blocks. Even though it is not being driven by the apartment complex we did not really analysis these proffers with that project in the back of our mind; we were analyzing them you know do we have any concerns about any of these changes and we just don't put this one in.

Ms. Harrell said actually she really thought we had gotten the 30 units approved when we did the movie theater because that is where the 30 units came from. Perhaps it was not approved because we had so many iterations of these proffers that we all have gotten very confused. So we actually thought the 30 units was approved when we did the movie theater. So she thinks that was a holdover from those proffers at that time.

Mr. Keller thanked Ms. Harrell.

Ms. Echols said Mr. Chairman for simplicity sake if the Commission believes that the phasing proffer does not need to be changed it will not impede their ability to do the residential complex that has been described.

Mr. Keller asked do we have an overall figure for the total project beyond this just for background of the amount of square feet of commercial that has been constructed and the amount of homes so that we can compare that to the original number of all pieces that were proposed in the beginning to get back to Mr. Butler's point.

Ms. Ragsdale replied that she does not have the exact figures.

Ms. Echols pointed out that she may have them. In Hollymead Town Center Area A2 nothing has been developed.

Mr. Keller said he understands that; but, the point that has been made that he thinks they all understand and we have heard from the applicant as well on this, and he is not saying it is fact, he is asking you for the figures. The supposition is that there was a formula for the amount of commercial and residential and to date we have had significantly more commercial than we have residential that would have complimented that. Now we have a phased piece which is encouraging more commercial to occur before a certain residential number can be met yet again. He is not saying that any of that is fact for the record; he is asking for a clarification as to whether it is.

Ms. Ragsdale said that we don't have it; but, Ms. Echols is looking to see what the total number that may have been built in the other sections. Abington Place has been built and there have been the townhomes over in Area C. As like you said some of the other sections actually were approved with more commercial than this one, and this one was approved with the bulk of residential. But, we don't have that tabulated for you. We can just sort of eyeball it on the aerial with what you can see on the ground since we don't have the square footage and number of total units.

Ms. Echols asked for a moment on that request.

Mr. Keller invited other discussion.

Ms. Riley said she would like to stay on proffer 11. It seems that the majority of the pitch this evening is that they want this apartment complex to be able to go forward. But, changing the phasing in proffer 11 is not necessary for that to happen. She is not inclined to recommend that.

Mr. Keller said if we follow with counsel's approach that we have done twice now would it be your recommendation, Mr. Blair, that if Ms. Riley made that as a motion to amend the conditions.

Mr. Blair said what we have before us is set of amendments to the proffers. Currently one of the proposed amendments is to proffer 11 on the phasing portion. He would advise if you want to make a motion to move to reject the proposed amendment to proffer 11.

Ms. Riley said before she did that she just wondered if they want to go down this in order numerically and just start with proffer 1.

Ms. Firehock said she has a question for counsel. She does not understand why we can't simply take this list of proposed proffers and then we can say these are the ones we support and these are the ones that we don't. She wondered if what is happening is they were going to do each one, one at a time if you support 3 and 3 of them and not 2 of them.

Mr. Blair said for clarity sake it was for two reasons. Number one there is the clarity aspect of voting one at a time. Number 2 he thinks you can get the issues mixed up. Let's say you offer an amendment to accept the amendments to proffer 1 and proffer 8, but not to proffer 11, 13 and 4 that may die. And then what you have is no one knows who supports any of these amendments. It could end up in a permutation of many different sort of motions coming when you are talking about multiple proffers. That is just my advice to take them one by one if there are feelings that way because he thinks they could end up with a lot of motions. It could be while I support 4, but I don't really support 13; but, she supports 4 and 13.

Ms. Firehock thanked Mr. Blair.

Ms. More said she had a question about the comparison chart. She knows this was something that was given to us. But, the 44 ½ acres is the entire site some of which has already been developed. She asked if that is correct.

Ragsdale replied that the 44 acres in this chart is just A2.

Ms. More said she thinks that is just a little bit misleading because what we are being shown here is there is a choice of residential units of 550 and then non-residential units none, and then what could be done non-residential is 250,000 square feet and they want to ultimately propose a mix of development. She does not really understand what the purpose of this comparison chart is. It is just one section of the property and she did not know if they can get those numbers tonight. It seems that it has been largely developed commercially.

Ms. Ragsdale pointed out this was provided by the applicant and she has not seen it until this evening. So she can't speak to that. But, overall with Hollymead Town Center she thinks we were trying to pull up some of the capacity analysis and figures that Ms. Echols has worked on with the comp plan update. So we think it is about 250 units of residential that have been built like we said with Abington and the other townhouses. She did not know if they have gotten to the commercial.

Ms. Echols said no, she did not have any updated figures on how much non-residential has been built. She thinks it goes back to 2013 and she does not have it any more updated. But, we had Hollymead Town Center Area C which has 42 units in it, and Abington Place which has about 200. So it is somewhere around 250 units that have been built so far. But, it certainly is not the high numbers that would be in A2. This would be first part of A2 that would be developed.

Mr. Lafferty asked do we know how many of those 250 are affordable.

Ms. Echols replied that she would have to relook at the proffers to see if they all proffered 15% affordable because she does not remember. At this point she would have to look up the proffers and see what it is at that time.

Ms. Ragsdale noted that she does have that on the affordable housing sheet. She does not know that those areas had affordable housing proffers. They are not on my list. She knows A2 is on her list; but, she did not believe the other sections had the affordable housing proffer.

Mr. Lafferty asked if they did not conform to the comprehensive plan.

Ms. Echols said if the Commission wants staff to provide some additional information that is also an option. If you feel like you can't take action tonight we can provide you with the additional information you need in order to have a full picture because we don't have all of that information at our fingertips to give you at this moment.

Mr. Keller said he thinks some important questions have been asked this evening and some strong points have been made by the applicant and by the public. He would be comfortable if somebody was interested in making the motion that you just outlined that we defer and staff comes back with more specific information.

Mr. Firehock asked for information on what was promised originally for the entire site and what has actually been built.

Mr. Keller agreed.

Ms. Echols said she thinks the applicant needs to be amendable to the deferral in order for the Commission to do that because she believes the time period is up.

Mr. Keller noted that was a question the Commission needs to ask Mr. Wood. If he was not amendable to that, then we will have to take action.

Mr. Wendell Wood apologized again because he was confused. The other areas are not ours. We don't own them. We are talking about what our restrictions are. We do not own anything other than A2 and never have and can't control that section. We have not put apartments on our section and that is what we were instructed to do and what they are trying to do.

Mr. Keller said that we understand. But, there was an overall concept that was agreed to with a number of different components to it.

Mr. Wood pointed out each section had its own requirements. Each section has an amount of commercial that can be built on ours. There is an amount of apartments that could be built. It had a staging of what it is. We are actually behind. We have built commercial on our section and have built no apartments. So it is almost a reverse of what is being asked. We are not asking for more commercial. I would think you would be saying hey you have not done your residential proportion. We have built no residential in 9 years. The other parcels that we are talking about I think staff can easily find in a moment. We have no control over how that is built. We are asking to build apartments which we really thought that was what we were being instructed to do.

Mr. Keller said he will take a shot at it and then fellow Commissioners can weigh in. He said the concern comes over this phasing and the fact that there is still the protection for a significant amount of commercial to be built with a lower. So if that phasing piece came out so that we knew that it was going to be residential it would complement that greater picture of commercial that had occurred. So maybe we are not far off here in what we need to agree on.

Mr. Wood said he did not think we are. That is what he means they are trying to catch up. We have zero apartments. We are trying to build a portion of apartments that we were being requested to build. This is the first apartment request on what we own.

Mr. Keller asked if there was anyone else who wanted to speak. There being no one, he closed the public hearing to bring the matter before the Commission.

Ms. Firehock said it seemed to me that in listening to all the testimony about the different proffers the number one thing that she heard really was the concern about the amount of the cash proffers. She knows that there was also a statement made that if we could not support reduction of the cash proffers they would not then be able to support the affordable housing proffer. So we are talking a lot about phasing and other aspects and she was just sort of calling out that was the number one thing she has heard.

Mr. Keller said he thinks that would change my mind. He noted that Ms. Echols got me thinking about we could put it off; but, he thinks we should go forward and go through the points if we are going to take counsel's suggestion and we go point by point and see whether we are supportive or not. He said they can either do it as a straw pull up here to get a sense or we can vote each one for the proffers.

Ms. Spain said she needs a point clarification that you just said if the cash proffers are not revoked there could be no affordable housing. My understanding was that if you can't get the cash proffers reduced there will be no apartment building at all. She asked is that correct.

Mr. Lafferty said that is what we were told.

Ms. Firehock pointed out it was from this particular person who is proposing to build, but not for all time necessarily. The case has been made that the market does not support this project.

Mr. Keller asked for a motion on the first staff recommendations for approval of the proffer amendments.

Ms. Riley asked that they start with Proffer #1. The staff has recommended approval of eliminating the minimum percentage of units required for-sale and to revise the banking/carry-over requirements. She thinks that is a reasonable thing. Personally she did not think they need to tie the percentage to for sale. She thinks there is a real demand for affordable rental units as well. She thinks that the banking carry over requirements is okay as long as in the end there is 15 percent units total. But, the staff does not recommend revising how the percentage of affordable units are calculated from the total number of units within the development to total market rate units. She would agree with that because she did not want to see the number of affordable units reduced, which is what that would do.

Ms. Firehock seconded.

Mr. Keller said let's go in order and just handle the first half of that.

Mr. Blair said or in effect you could make on that one just to approve staff's recommendation as proffer 1 because staff is recommending approval of that portion of proffer 1 and disapproval of the other portion of the amendment.

Mr. Keller asked Ms. Riley if she was agreeing that was the point.

Ms. Riley made a motion to agree with the staff recommendation on proffer #1.

Mr. Keller asked if the motion was for both the part that staff recommends and the part that they don't recommend.

Ms. Riley replied yes.

Mr. Keller asked for a roll call vote.

The motion passed by a vote of 6:0:1. (Dotson absent)

Mr. Keller thanked them for helping us move this along. He asked for a motion on the next proffer.

Ms. Ragsdale said she thinks we decided to go in order of the proffer and not down the list as she had them here. So it takes us to proffer 4 to reduce the CIP cash proffer amounts.

Mr. Lafferty moved to agree with staff's recommendation not to recommend the approval of Proffer 4 to reduce the CIP cash proffer amounts.

Ms. Riley seconded the motion.

There being no discussion, Mr. Keller asked for a roll call.

The motion passed by a vote of 6:0:1. (Dotson absent)

Mr. Keller said they would move down the list.

Mr. Lafferty said Proffer 8 is the next one.

Ms. Riley said that she thought she heard the applicant agree with the staff recommendation to not remove the cash proffer in its entirety for off-site recreation facilities, but to suggest that the cash proffers for the difference of the 1,222 and the 913 units that there would be a \$500 cash proffer for those. She said maybe that was not stated very clearly.

Ms. Echols replied yes, that was staff's recommendation and we did hear that the applicant said that they would be willing to proffer that. She was not sure how you would word that one.

Mr. Blair said the way that Proffer 8 is worded right now staff does not recommend approval of the proposed Proffer 8. He asked is that correct.

Ms. Echols replied that actually it is as it is written on the screen that staff does not recommend amendment to remove the cash proffer in its entirety; we recommend keeping the proffer revising it to begin proffer payments with the 913 unit within the development, and the applicant verbally agreed to that.

Mr. Blair said right, and so you would move to adopt the recommendation by staff for Proffer 8.

Ms. Riley made the motion to adopt the staff recommendation as written by staff for Proffer 8.

Ms. Firehock seconded the motion.

The motion passed by a vote of 6:0:1. (Dotson absent)

Mr. Keller noted the next number is Proffer 11.

Mr. Lafferty moved to recommend accepting staff's recommendation on Proffer 11 of the phasing plan to eliminate the requirement for a set ratio of commercial to residential square footage to be constructed over the life of the project.

Ms. Spain seconded the motion.

Mr. Keller invited discussion.

Ms. More pointed out that phasing was the one thing she was hearing from most people that they were not comfortable with.

Ms. Firehock pointed out that we did not see that it was necessary.

Ms. More agreed and asked if she misunderstood the wording.

Mr. Keller pointed out there was a motion and second, but now we have a discussion.

Ms. More said that out of all of them that was the one that at least some commissioners expressed a concern to not change the phasing because that does not affect their ability to move forward. They can move forward with residential without us changing the phasing so it does not need to be removed necessarily.

Mr. Keller suggested they vote on this and then we can come back if your view is held and you can make a motion the other way on this.

Ms. Spain said she thought that the intent was only for the residential part of this, which basically makes the phasing plan relevant at this point right or not.

Ms. Riley said she thinks she heard the applicant and the staff say that this change that is recommended for the phasing plan is not necessary for this apartment complex or other residential development to go forward.

Mr. Keller invited Ms. Echols to jump in.

Ms. Echols said she thinks if the Commission believes that the existing proffer that has been approved in year's past is sufficient, then they don't want to follow staff's recommendation that has been put in the staff report.

Ms. Ragsdale pointed out the recommendation is to approve the proffer as amended not to eliminate it altogether. That is what the applicant has proposed. She explained that it changes the ratio a little bit; but, the proffer that has been submitted is like we talked about to reduce the number of residential units that are required as compared to the commercial.

Mr. Keller asked if the previous one that we are acting on would have called for more residential sooner than commercial.

Ms. Ragsdale replied yes.

Mr. Keller said first we have a motion and so we either have to have it withdrawn or we have to vote on it.

Mr. Lafferty said since we have a second he did not know if he could withdraw the motion.

Mr. Blair said if there has been a second, then it probably needs to be voted on.

Mr. Keller asked for a roll call.

Ms. Taylor called the roll.

Mr. Lafferty voted no.

Ms. Spain voted no given my current understanding of the situation.

Ms. Keller voted no.

Ms. Firehock voted no.

Ms. Riley voted no.

Ms. More voted no.

The motion for approval failed by a vote of (0:6:1) (Lafferty, Spain, Keller, Firehock, Riley, More nay).

Mr. Keller thanked the commissioners for the good humor in which they have dealt with this.

Mr. Lafferty said it was a valuable discussion.

Mr. Keller said it is the value in going through these point by point so he appreciates what counsel is having us do.

Mr. Lafferty agreed that they needed to deal with it.

Mr. Keller asked for a new motion.

Ms. More made a motion to not amend Proffer 11 the phasing proffer.

Ms. Riley seconded the motion.

The motion to not amend Proffer 11 phasing was approved by a vote of (6:0:1) (Dotson absent).

Mr. Keller noted next is Proffer 13. He asked if he remembers that there may be some changes in that.

Ms. Ragsdale replied no, this is just the one to add those amenities. We have dealt with the other one already. So this is a new proffer that they would be adding.

Mr. Keller asked for a motion.

Ms. More made a motion to recommend approval of Proffer 13, the recreation amenities as outlined by staff.

Mr. Lafferty seconded the motion.

Mr. Keller invited discussion.

Ms. Firehock said her impression of that particular proffer that was added was it was to off-set getting rid of the contribution to the regional recreational amenity. So if you accept this we are sort of making the developer do the thing they originally was supposed to do plus more than what they originally came forward with.

Ms. More said it is the \$500 and they are saying they will happily give that after 913 units, which indicates to me here there is no intention to ever reach that many units. What she is seeing from these numbers is they were happy to proffer that at 913 or maybe even 800 because she did not think they are going to reach that many units. That is what she is seeing from the comparison chart for A2.

Mr. Keller asked if that affects your opinion, and Ms. More replied no, because she did not think the \$500 is going to come into play.

Mr. Keller asked for a roll call.

The motion was approved by a vote of 6:0:1. (Dotson absent)

Mr. Keller said the request will be going forward with our recommendations to the Board of Supervisors for a decision. He thanked everyone that came for this.

(Recorded and transcribed by Sharon Taylor, Clerk to Planning Commission)